

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JUL 10 2006

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS DEPUTY

RODNEY JEROME BURTON,

Petitioner,

vs.

JUSTIN JONES, Director,

Respondent.

No. CIV-06-267-W

ORDER

On June 13, 2006, United States Magistrate Judge Bana Roberts issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss filed by respondent Justin Jones, Director, be granted and that the Petition for a Writ of Habeas Corpus ("Petition") filed by petitioner Rodney Jerome Burton be dismissed as untimely. Burton was advised of his right to object, and the matter now comes before the Court on Burton's Objections to the Report and Recommendation.

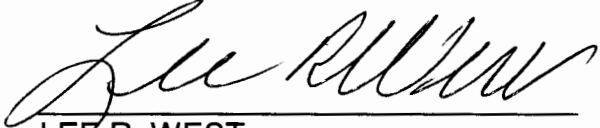
Upon de novo review of the record, the Court concurs with Magistrate Judge Roberts' suggested disposition of this matter. Burton's Petition is subject to the one-year statute of limitations established by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d)(1). Because Burton's conviction for trafficking in illegal drugs (cocaine base) became final for purposes of section 2244(d)(1) in December 2003, the one-year period for filing a federal habeas petition in this case expired in December 2004. Burton's Petition filed in March 2006 is therefore time-barred unless Burton can establish that the limitations period has been tolled. The Court not only finds that Burton's Petition was untimely filed even after application of any statutory tolling under title 28, section

2244(d)(2) of the United States Code to which Burton is entitled, but also finds that Burton has failed to demonstrate his entitlement to equitable tolling in this instance. E.g., Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir. 2000)(equitable tolling appropriate where petitioner is actually innocent, where uncontrollable circumstances prevent timely filing or where petitioner exercised diligence in pursuing federal habeas claims).

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on June 13, 2006;
- (2) GRANTS Jones' Motion to Dismiss filed on April 21, 2006; and
- (3) DISMISSES Burton's Petition as untimely.

ENTERED this 10th day of July, 2006.



LEE R. WEST
UNITED STATES DISTRICT JUDGE